



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2900 FAX (603) 271-2456



Robert Barr
P.O. Box 341
Belmont, NH 03220

Re: 55 Park Street, Northfield, NH

NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 03-020

July 23, 2003

I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing ("Notice") is issued by the Department of Environmental Services, Waste Management Division ("the Division") to Robert Barr, pursuant to RSA 149-M:16 and Env-C 601.05. The Division is proposing that a fine of \$16,000 be imposed against Robert Barr for the violations alleged below. **This Notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Robert Barr is an individual having a mailing address of P.O. Box 341, Belmont, NH 03220.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIM(S)

1. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of the Department of Environmental Services ("DES") has adopted Env-Wm 100 – 300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
2. Pursuant to RSA 149-M:16, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of RSA 149-M or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted Env-C 612 to establish the schedule of fines for such violations.
3. Robert Barr is the record owner of land at 55 Park Street, Northfield, NH, more particularly described in a deed recorded in the Merrimack County Registry of Deeds at Book 2223, Page 1073, and identified on Northfield Tax Map U7, as Lot 6 ("Park Site").
4. On May 23, 2001, Division personnel received a complaint alleging improper management of solid waste at the 120 Reservoir Road, Northfield, NH ("Reservoir Site"). At this time Robert Barr was the record owner of the Reservoir Site identified on Northfield Tax Map R16, as Lot 26.

5. On September 5, 2001, the Division issued Letter of Deficiency No. WMD 01-024 ("LOD") to Robert Barr for violations of RSA 149-M and the Solid Waste Rules at the Reservoir Site.
6. Mr. Barr resolved the solid waste issues outlined in the LOD, and on October 24, 2001, the Division issued a Letter of Compliance for the Reservoir Site to Mr. Barr.
7. On May 20, 2002, Division personnel received a complaint alleging improper disposal of solid waste at the Park Site.
8. On June 4, 2002, Division personnel conducted an inspection of the Park Site. The purpose of the inspection was to determine compliance relative to RSA 149-M and the Solid Waste Rules.
9. During the June 4, 2002 inspection, Division personnel observed waste consisting of, but not limited to, scrap metal, typewriters, metal duct work, metal stove pipe, cardboard, broken glass, double oven stove, metal office cabinets, damaged Christmas decorations, a sink, computer monitors, file cabinets, car parts, and PVC piping.
10. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."
11. RSA 149-M:4, XXI defines "refuse", in part, as "any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."
12. The scrap metal, typewriters, metal duct work, metal stove pipe, cardboard, broken glass, double oven stove, metal office cabinets, damaged Christmas decorations, a sink, computer monitors, file cabinets, car parts, and PVC piping observed by Division personnel at the Park Site are solid wastes as defined by RSA 149-M:4, XXII.
13. RSA 149-M:4, IX defines a "[solid waste] facility" as "a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste."
14. The Park Site constitutes a "solid waste facility" as defined by RSA 149-M:4, IX.
15. Env-Wm 102.116 defines "owner" as "a person who owns a facility or part of a [solid waste] facility."
16. Robert Barr is the owner of a solid waste facility.
17. RSA 149-M:9, I states that "No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES]."
18. A review of Division files shows that Robert Barr has not applied for nor does he hold a permit to operate a solid waste facility at any New Hampshire location.

19. On June 27, 2002, Division personnel conducted a follow-up inspection of the Park Site. Division personnel observed an empty dumpster at the Park Site. The Park Site remained unchanged since the June 4, 2002 inspection.

20. On July 17, 2002, Division personnel conducted a second follow-up inspection of the Park Site. Division personnel observed a dumpster approximately half full with carpeting, cardboard, plastic, metals, and other solid wastes. At that time, it appeared that approximately 30-40% of the solid wastes from the Park Site had been removed from the Park Site and placed into the dumpster.

21. On July 30, 2002, Division personnel conducted a third follow-up inspection of the Park Site. Division personnel observed that the dumpster had been removed from the Park Site. Division personnel observed no other changes to the Park Site since the July 17, 2002 inspection.

22. By letter dated August 5, 2002, to Mr. Barr, Division personnel requested that Mr. Barr remove all solid wastes at the Park Site by September 15, 2002, and to submit copies of the disposal receipts to the Division.

23. On September 3, 2002, Division personnel conducted a fourth follow-up inspection of the Park Site. The Park Site remained unchanged since the July 30, 2002 inspection.

24. On September 6, 2002, Mr. Barr contacted the Division relative to the solid waste at the Park Site. Mr. Barr informed Division personnel that he had disposed of 8,700 pounds of solid waste from the Park Site. No disposal receipts for these wastes have been submitted to the Division as previously requested. Mr. Barr told Division personnel that he would have all solid waste at the Park Site cleaned up by the first snowfall.

25. On September 19, 2002, Division personnel conducted another follow-up inspection of the Park Site. The Park Site remained unchanged since the September 3, 2002 inspection.

26. On October 24, 2002, Division personnel conducted another follow-up inspection of the Park Site. The Park Site remained unchanged since the September 19, 2002 inspection.

27. On November 13, 2002, Division personnel conducted another follow-up inspection of the Park Site. The Park Site remained unchanged since the October 24, 2002 inspection.

28. On December 27, 2002, Division personnel conducted another follow-up inspection of the Park Site. The Park Site remained unchanged since the November 13, 2002 inspection except that the wastes were now snow covered.

29. On February 25, 2003, Division personnel hand delivered Administrative Order No. WMD 03-06 ("Order") to Mr. Barr. Division personnel also conducted another follow-up inspection of the Park Site. The Park Site remained unchanged since the December 27, 2002 inspection.

30. On April 9, 2003, Division personnel conducted another follow-up inspection of the Park Site. The Park Site remained unchanged since the February 25, 2003 inspection.

31. On May 6, 2003, Division personnel conducted another follow-up inspection of the Park Site. The Park Site remained unchanged since the April 9, 2003 inspection.

32. On May 20, 2003, Division personnel conducted another follow-up inspection of the Park Site. The Park Site remained unchanged since the May 6, 2003 inspection.

33. On July 8, 2003, Division personnel conducted another follow-up inspection of the Park Site. The Park Site remained unchanged since the May 20, 2003 inspection.

IV. VIOLATIONS ALLEGED

1. Robert Barr has violated RSA 149-M:9, I by operating an unpermitted solid waste facility.
2. Robert Barr has violated RSA 149-M:15, I by failing to comply with Administrative Order No. WMD 03-006.

V. PROPOSED ADMINISTRATIVE FINES

1. For the violation identified in Paragraph IV.1 above, Env-C 612.11(a) specifies a fine of \$2,000 per calendar month or portion thereof. For the violation noted above, the Division is seeking a total fine of \$8,000 for four months (February-June).
2. For the violation identified in Paragraph IV.2 above, Env-C 612.11(d) specifies a fine of \$2,000 per calendar month or portion thereof that compliance is not achieved after the deadline specified in the Order for each provision of the order that is not complied with. For this violation, the Division is seeking a total fine of \$8,000 for four months (February-June) of non-compliance with the Order.

The total fine being sought is \$16,000.

VI. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, you are required to respond to this Notice. Please respond no later than August 11, 2003, using the enclosed colored form.

1. If you would like to have a hearing, please sign the appearance section of the colored form and return it to the DES Legal Unit, as noted on the form. A Notice of Scheduled Hearing will be issued.
2. If you choose to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
3. If you wish to discuss the possibility of settling the case, please sign the appearance and return it to the DES Legal Unit and call the DES Legal Unit to indicate your interest in settling.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

VII. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violation(s) and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine(s) sought will be imposed, subject to the following:

Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** you did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
3. You do not have a history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

*****IMPORTANT NOTICE*****

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe shows that you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to

the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

If you wish to have an informal meeting to discuss the issues, you must contact the DES Legal Unit at (603) 271-6330 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via DES's Web page (www.state.nh.us.des). If you have any questions about this matter, please contact DES Legal Unit at (603) 271-6330.

COPY
Philip J. O'Brien, Ph.D., P.G., Director
Waste Management Division

Enclosure (*NHDES Fact Sheet #CO-2000*)

cc: Gretchen Rule, DES Legal Unit
Susan Alexant, DES Hearings and Rules Attorney
Philip J. O'Brien, Ph.D., P.G., Director, WMD
Tammy Calligandes

Enclosure: photos

***** RETURN THIS PAGE ONLY *****

Robert Barr

IS REQUIRED BY LAW TO RESPOND TO THIS NOTICE.

PLEASE RESPOND NO LATER THAN August 11, 2003

Please check the appropriate line and fill in the requested information below.

APPEARANCE On behalf of Robert Barr

_____ I request to have a **formal hearing** scheduled in this matter.

_____ I request to have a **prehearing conference** scheduled in this matter.

_____ I would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of Robert Barr

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$16,000.00 paid to "Treasurer, State of New Hampshire" is enclosed.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY TO:

Michael Sclafani, Legal Assistant

Department of Environmental Services ~ Legal Unit

6 Hazen Drive, P.O. Box 95

Concord, NH 03302-0095

** If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*



